

Title 24 DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

Subtitle 05 ECONOMIC DEVELOPMENT

Chapter 11 BRAC Revitalization and Incentive Program

Authority: Economic Development Article, §§5-102(1) and 5-1301—5-1307, Annotated Code of Maryland

.01 Objective.

A. The objective of the BRAC Revitalization and Incentive Zone Program is to manage growth in the State related to the federal Base Realignment and Closure (BRAC) Commission recommendations.

B. By managing growth, the Program will:

(1) Enhance the State's ability to preserve natural resources;

(2) Enhance the vitality of older neighborhoods; and

(3) Increase the State's return on infrastructure investment by:

(a) Encouraging new development within designated growth areas;

(b) Directing growth related to BRAC in areas that are served by public infrastructure and mass transit facilities; and

(c) Providing financial incentives to local governments to provide the infrastructure necessary to encourage BRAC households to locate in those designated growth areas.

.02 Purpose.

This chapter describes the procedures that shall be used by the Secretary of Business and Economic Development to designate zones and to establish the requirements an area shall meet in order to be designated a zone.

.03 Scope and Administration.

The Secretary of Business and Economic Development shall administer the BRAC Revitalization and Incentive Zone Program. The Department of Assessments and Taxation and the Comptroller shall administer the activities relating to revenue and taxes. The procedures set forth in this chapter are applicable to the designation of zones and the administration of the State BRAC Revitalization and Incentive Zone Program. The State BRAC Revitalization and Incentive Zone Program is independent of the State Enterprise Zone Program and of any federal enterprise zone program or designation.

.04 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Act" means Economic Development Article, Title 5, Subtitle 13, Annotated Code of Maryland.

(2) Abandoned Structure.

(a) "Abandoned structure" means a commercial or residential building that is given up and substantially unused for its permissible purposes with no apparent intent of an owner to return to, reclaim, or again use the building.

(b) "Abandoned structure" includes a building where the ratio of the square footage of the building that is vacant and substantially unused to the total usable square footage of the building is 20 percent or more.

(3) "Area" means a geographic area within one or more political subdivisions within the State described by a closed perimeter boundary.

(4) "BRAC installation" means a military installation as defined by 10 U.S.C. §2687(e)(1) that is:

(a) Located in the State; and

(b) The subject of BRAC action or affected by BRAC action.

(5) "BRAC revitalization and incentive zone" means an area:

(a) Meeting the requirements of Economic Development Article, §5-1303(c), Annotated Code of Maryland, and this chapter; and

(b) So designated by the Secretary under Economic Development Article, §5-1304, Annotated Code of Maryland, and this chapter.

(6) Brownfields.

(a) "Brownfields" means real property that is eligible property within the meaning of Environment Article, §7-501(g), Annotated Code of Maryland.

(b) "Brownfields" includes a brownfields site as defined in Economic Development Article, §5-301(j), Annotated Code of Maryland.

(7) "Business entity" means a person operating or conducting a trade or business or carrying on commercial activities.

(8) "Business facilities" means permanent buildings and structures within an area in or on which business entities may:

(a) Operate or conduct trades or businesses; or

(b) Carry on commercial activities.

(9) "Department" means the Department of Business and Economic Development.

(10) "Enterprise zone" has the meaning stated in Economic Development Article, §5-701, Annotated Code of Maryland.

(11) "Federal enclave property" has the meaning stated in Tax-Property Article, §7-211.3(a)(2), Annotated Code of Maryland.

(12) "Government property" has the meaning stated in Tax-Property Article, §7-210(a), Annotated Code of Maryland.

(13) "Infrastructure" means capital public works in an area owned and maintained by the State or by a political subdivision for public purposes only and not for private purposes.

(14) "Interest in government property" means the interest or privilege of a person in government property if the property is leased or otherwise made available to that person by a government, or an agency or instrumentality of a government, with the privilege to use that property in connection with a business that is conducted for profit.

(15) "Local jurisdiction" has the meaning stated in Tax-Property Article, §7-211.3(a)(3), Annotated Code of Maryland.

(16) "Mixed-use development" means a development consisting of one or more lots which:

(a) Are developed as a cohesive project and designed with a blend of various compatible uses such as commercial, residential, office, and institutional; and

(b) Promote a mixture of complimentary land uses that includes retail, offices, commercial services, housing, and civic uses, to create economic and social vitality and to encourage the linking of trips as well as shortening trip distance between uses and services.

(17) PILOT Agreement.

(a) "PILOT agreement" means a payment in lieu of tax agreement, a negotiated written contract between the State or a local jurisdiction, or the State and a local jurisdiction, and the occupant, tenant, or private developer of an interest in government property, including but not limited to an enhanced use lease under 10 U.S.C. §2667, providing for the payment of money in lieu of real property taxes.

(b) A PILOT agreement is subject to the provisions of Tax-Property Article, §§6-101(a)(2) and 6-102(e), and §§7-211, 7-211.2, 7-211.3(b), and 7-501, Annotated Code of Maryland.

(18) Plan.

(a) "Plan" means the policies, statements, goals, and interrelated plans for private and public land use, transportation, and community facilities documented in texts and maps, which constitute the guide for an area's future development.

(b) "Plan" includes a general plan, master plan, comprehensive plan, or community plan adopted in accordance with Article 66B, §§3.01—3.09, Annotated Code of Maryland.

(19) "Planned MARC station along the Penn, Camden, or Brunswick lines, Baltimore Metro Subway station, Baltimore MTA Light Rail station, or Metrorail System station in the State" means any transit station that is:

(a) Included, as of the time of the filing of an application under this chapter, in a transportation plan element of a comprehensive plan or transportation plan meeting the requirements of Article 66B, §§1.03(a)(1)(i), 1.03(a)(2), and 3.05(a)(4)(ii), Annotated Code of Maryland; or

(b) Designated as a planned transit station by the Secretary of Transportation.

(20) "Political subdivision" means any county or municipal corporation in the State.

(21) "Present MARC station along the Penn, Camden, or Brunswick lines, Baltimore Metro Subway station, Baltimore MTA Light Rail station, or Metrorail System station in the State" means any transit station in the State that is serving its primary function as of the time of the filing of an application under this chapter.

(22) "Priority funding area" has the meaning stated in State Finance and Procurement Article, §5-7B-03, Annotated Code of Maryland.

(23) "Private developer" has the meaning stated in Tax-Property Article, §7-211.3(a)(4), Annotated Code of Maryland.

(24) "Qualified property" has the meaning stated in Tax-Property Article, §2-222(a)(8), Annotated Code of Maryland.

(25) "Revitalization area" means an area designated for redevelopment within a political subdivision's comprehensive plan, small area plan, or other growth related ordinance or plan, which typically are older neighborhoods or commercial or light industrial areas where renewed investment in housing and retail and commercial uses would help retain existing residents and businesses and attract new residents and businesses.

(26) "Secretary" means the Secretary of Business and Economic Development.

(27) Sensitive Area.

(a) "Sensitive area" has the meaning stated in Article 66B, §1.00(j), Annotated Code of Maryland.

(b) "Sensitive area" includes:

(i) Streams;

(ii) Wetlands, and their buffers;

(iii) 100-year flood plains;

(iv) Habitats of threatened or endangered species;

(v) Steep slopes;

(vi) Agricultural and forest lands intended for resource protection or conservation; and

(vii) Other areas in need of special protection as determined by the political subdivision's plan.

(28) "Submission date" means April 15 and October 15 of any calendar year.

(29) Substandard Structure.

(a) "Substandard structure" means:

(i) A commercial or residential building, or a portion of a commercial or residential building, in which there exist physical conditions serious enough to endanger the life, limb, health, safety, welfare, or property of the occupants or of the public; and

(ii) Housing that is overcrowded (more than one person per room) or has an incomplete or nonfunctional kitchen or bathroom.

(b) "Substandard structure" includes a structure that:

(i) Meets the definition of "substandard" in the political subdivision's HUD-approved consolidation plan under 24 CFR Part 91; or

(ii) Does not meet current standards for safety, occupancy, or habitability under the ordinances of the political subdivision in which it is located.

(30) Transit Station.

(a) "Transit station" means any facility, the primary function of which relates to the boarding and alighting of passengers from transit vehicles.

(b) "Transit station" includes platforms, shelters, passenger waiting facilities, parking areas, access roadways, and other real property used to facilitate passenger access to transit service or railroad service.

(31) "Zone" means a BRAC revitalization and incentive zone designated or proposed to be designated under this chapter.

.05 Eligible Applicants for BRAC Revitalization and Incentive Zone Designation.

A. Eligible applicants include all political subdivisions.

B. The following political subdivisions may apply to the Secretary to designate a zone:

(1) A political subdivision for an area within that political subdivision;

(2) With the prior consent of the municipal corporation, a county on behalf of a municipal corporation for an area in a municipal corporation; or

(3) Two or more political subdivisions jointly for an area astride their common boundaries.

C. Required Consent.

(1) A county shall obtain the required consent of a municipal corporation before submission of the application for designation concerning that municipal corporation. The consent document shall be included as part of the application.

(2) The required consent document shall be in the form required by the law of the county or the governing body of the municipal corporation, or both.

.06 Designations of BRAC Revitalization and Incentive Zones.

A. Within 60 days after a submission date, the Secretary may designate one or more zones from among the areas described in the applications which were timely submitted.

B. The Secretary shall determine and approve the precise location and boundaries of a zone on the basis of an application for designation, or permitted amendments to the application.

C. Before a designation of a zone, the Secretary shall consult with:

(1) The Secretary of Transportation;

(2) The Secretary of Housing and Community Development;

(3) The Secretary of the Environment; and

(4) The Secretary of Planning.

D. The Secretary may consult and receive the advice of other appropriate individuals and advisors.

E. PILOT Agreements. If the political subdivision is authorized under Tax-Property Article, §7-211.3, Annotated Code of Maryland, to enter into a PILOT agreement with a private developer for federal enclave property, then the Secretary may not designate the area as a zone until, in the judgment of the Secretary in consultation with the Secretary of Transportation, the political subdivision has entered into good faith negotiations for a PILOT agreement with all private developers of the federal enclave property.

.07 Expansions of BRAC Revitalization and Incentive Zones.

A. The Secretary may permit the expansion of a designated zone into an area that meets the requirements of Economic Development Article, §5-1303, Annotated Code of Maryland, and this chapter.

B. A political subdivision may apply to the Secretary for permission to expand an existing zone in the same manner as the political subdivision would apply to designate a new zone.

C. The political subdivision or subdivisions that originally obtained the zone designation shall apply for the expansion.

D. The application for expansion of a designated zone shall set forth the basis for the request for expansion but need not duplicate data submitted for the original designation if the data submitted is sufficient for the Secretary to determine the relation of the geographic area of the existing zone to the geographic area of the proposed expansion of that zone.

E. The designation period for the expansion of the zone runs simultaneously with the period of the original zone designation and expires at the same time as the original zone designation.

.08 Extraordinary Expansions of BRAC Revitalization and Incentive Zones.

A. The Secretary may grant an extraordinary expansion of a zone each calendar year for an area that:

(1) Meets the requirements of Economic Development Article, §5-1303, Annotated Code of Maryland, and this chapter; and

(2) In the determination of the Secretary, is of strategic importance to the economic development interests of the county in which the zone is located.

B. A political subdivision may apply to the Secretary for the designation of an extraordinary expansion of an existing zone in the same manner as the political subdivision would apply to designate a new zone.

C. The political subdivision or subdivisions that originally obtained the zone designation shall apply for the extraordinary expansion.

D. The application for an extraordinary expansion of a designated zone shall set forth the basis for the request for extraordinary expansion but need not duplicate data submitted for the original designation if the data submitted is

sufficient for the Secretary to determine the relation of the geographic area of the existing zone to the geographic area of the proposed expansion of that zone.

E. The designation period for the extraordinary expansion of the zone runs simultaneously with the period of the original zone designation and expires at the same time as the original zone designation.

.09 Limits on Designations of BRAC Revitalization and Incentive Zones.

A. The Secretary may not designate more than six zones in a calendar year.

B. Limit on Number of Zones Designated.

(1) A county may not receive more than two zones.

(2) A joint application by two or more counties counts as one designation of an area as a zone for each county.

(3) A joint application by two or more municipalities within the same county counts as one designation of an area as a zone within the county.

(4) A joint application by a county and a municipality located within an adjoining county counts as one designation of an area as a zone for each county.

(5) Except as provided in §B(6) of this regulation, an application for expansion of a designated zone is considered a new zone request and is counted as one additional designation of an area as a zone for the appropriate county or counties.

(6) An expansion of a zone that does not exceed 50 percent of the existing geographic area of the zone is not considered a new zone request and does not count toward the limit set forth in §A or B(1) of this regulation.

(7) An extraordinary expansion of a zone does not count towards the limit set forth in §A or B(1) of this regulation.

(8) The Secretary may not grant more than two extraordinary expansions of zones throughout the State in any calendar year.

.10 Designation and Notice; Reapplication.

A. A designation by the Secretary of an area as a zone is final.

B. The Secretary shall give written notice of a designation to both a political subdivision that receives a designation and the State agencies that will provide tax credits and other incentives and initiatives.

C. The Secretary shall notify a political subdivision that does not receive a requested designation in writing. The political subdivision may reapply for a designation at any time by resubmitting the previously filed application or a revised application.

.11 Mandatory Requirements for Designation of a BRAC Revitalization and Incentive Zone.

A. A political subdivision shall demonstrate in its application that an area meets all of the following requirements in order to receive the Secretary's designation of the area as a zone:

(1) That the area is located within a priority funding area;

(2) That the area is served by a public or community water and sewer system, or is planned to be served by a public or community water and sewer system under the approved 10-year water and sewer plan;

(3) That the area is designated by the political subdivision for mixed use development that includes residential uses as part of the mix of land uses;

(4) That, at the time of the filing of the application, the area has an average density of at least 3.5 units per acre, calculated in accordance with State Finance and Procurement Article, §5-7B-03, Annotated Code of Maryland, in that part of the area designated for residential use or development; and

(5) If a political subdivision is authorized under Tax-Property Article, §7-211.3, Annotated Code of Maryland, to enter into a PILOT agreement with a private developer for a federal enclave property, that the political subdivision has entered into good faith negotiations, in the judgment of the Secretary, for a PILOT agreement with all private developers of federal enclave property within the county.

B. The Secretary may withhold designation of an area proposed to be designated as a zone until a political subdivision has entered into PILOT agreements with some or all private developers for federal enclave property within the county on terms satisfactory to the Secretary.

.12 Requirements for Priority Consideration for Designation of a BRAC Revitalization and Incentive Zone.

A. The Secretary will give an area priority in consideration for designation of an area as a zone if the area is within one-half mile of a present or planned:

(1) MARC station along the Penn, Camden, or Brunswick lines;

(2) Baltimore Metro Subway station;

(3) Baltimore MTA Light Rail station; or

(4) Metrorail System station in the State.

B. Discretionary Standard for Priority Consideration. The Secretary may give an area priority in consideration for designation of an area as a zone if the area is of strategic importance to the economic development interests of a county.

.13 Additional Factors to be Considered for Designation of a BRAC Revitalization and Incentive Zone.

In addition to the factors to be considered in Regulations .11 and .12 of this chapter, the Secretary shall consider the following factors in determining whether to designate an area as a zone:

A. Whether the area's designation as a zone is consistent with the political subdivision's comprehensive plan;

B. Whether the area contains brownfields sites that are capable of redevelopment;

C. Whether the political subdivision has targeted the area for revitalization as provided for in the political subdivision's comprehensive plan or in another plan or ordinance;

D. The relationship of the area to a BRAC installation;

E. How the area is impacted by the BRAC Commission recommendations;

- F. The availability, cost, and condition of business facilities;
- G. The number and age of abandoned structures;
- H. The number and age of substandard structures;
- I. The income of residents of the area relative to the State and regional median incomes;
- J. The number of individuals residing in the area who receive public assistance;
- K. The number of individuals residing in the area who are unemployed;
- L. The extent of unemployment in the proposed area;
- M. The ability of government and of the private sector, including business and nonprofit, nongovernmental organizations, to upgrade the social and economic conditions of the area;
- N. The need for financing of small businesses to upgrade the social and economic conditions of the area;
- O. Any existing or proposed plans of the applicant and of other political subdivisions to undertake improvements to facilities or infrastructure in the area;
- P. Any financial commitments of the applicant and of other political subdivisions to undertake improvements to facilities or infrastructure in the area;
- Q. The nature and extent of a political subdivision's participation in revitalization activities in the area, including whether the area has been designated an enterprise zone;
- R. The presence of a special taxing district, an historic district listed on the National Register of Historic Places, or a local historic district in, or in proximity to, the area;
- S. The existence of support for the proposed zone from community and business organizations;
- T. Other revitalization projects undertaken in the area;
- U. A political subdivision's participation in workforce readiness programs;
- V. A political subdivision's participation in the creation of affordable and workforce housing options for residents of the area;
- W. Whether and to what extent a political subdivision has acted to provide for the adequate protection and conservation of vital natural resource areas and agricultural areas within the political subdivision's comprehensive plan, or other plan, or ordinances;
- X. The presence of sensitive areas in the area and the political subdivision's existing or proposed plans for the protection of those sensitive areas;
- Y. Whether and to what extent a political subdivision has provided for transportation options in the area that improve accessibility and support transit ridership, walking, and bicycle use;
- Z. Whether and to what extent a political subdivision has provided for land use that supports transit ridership, walking, and bicycle use; and

AA. The fiscal impact of the proposed designation of the area as a zone on the State.

.14 Other Application Requirements.

A. Applications Generally.

(1) An application must be received in the Office of the Secretary, Department of Business and Economic Development, on or before any submission date.

(2) An application shall be complete, meet all requirements of the Act and this chapter, and be properly signed by the chief elected officer, or officers in the case of a joint application, or, if none, by the governing body of each of the political subdivisions.

(3) The Secretary may permit any political subdivision to amend its application at any time before the Secretary acts upon the application.

B. Additional Information, Maps, and Documents to be Filed with an Application. In addition to information addressing the requirements of Regulations .11, .12, and .13 of this chapter, each political subdivision shall submit the following with an application:

(1) PFA Map: a map showing that the proposed zone is within a priority funding area;

(2) Tax map or parcel map: A tax map or block plat showing all parcels that are within the proposed zone, accompanied by a parcel listing, which clearly shows the proposed boundaries of the zone;

(3) Zoning map or maps;

(4) Land use map or maps;

(5) A map showing the relationship of the proposed zone to enterprise zones, special taxing districts, historic districts listed on the National Register of Historic Places, locally designated historic districts, Designated Neighborhoods, Community Legacy Areas, Main Street Maryland communities, or Priority Funding Areas within or in the vicinity of the proposed zone;

(6) Maps showing the presence and location of sensitive areas and brownfields;

(7) A statement whether the political subdivision has examined the feasibility of creating educational or training opportunities for employers and employees of business enterprises located or to be located in the proposed zone, as follows:

(a) If these opportunities are to be established, indicate the nature, type, and sponsorship of the educational or training opportunities; or

(b) If these opportunities are not to be established, indicate the reason;

(8) Evidence and certification that the political subdivision, before submission, held a public hearing with adequate notice on the application;

(9) Letters, resolutions, and other documents from community or business organizations, businesses and citizens located in the proposed zone, elected officials, and others supporting the application;

(10) A description of the expected economic and social impact of a zone on the communities within, or in the vicinity of, the proposed zone:

(a) Identifying the needs of the political subdivision including economic, financial, and social needs; and

(b) Describing how the designation of a zone is expected to aid or assist the political subdivision to address those needs;

(11) A description of the infrastructure improvements proposed to be constructed in the zone, the expected economic, social, and public health benefits of these improvements, obstacles or problems that might impede the construction of the improvements, and the political subdivision's plans for financing the improvements; and

(12) Other information as established by the Secretary from time to time and prescribed in instructions for the application.

.15 Annual Report.

A political subdivision with a zone designation shall submit an annual report to the Department by October 15 of the year after the designation of the zone, and by October 15 of each of the succeeding years until the year after the expiration and termination of the zone. The report shall assess with respect to each zone within the boundaries of the political subdivision the effectiveness of the benefits provided to the zone or zones in attracting and retaining businesses within the zone or zones, in the form and containing the information established by the Secretary.

.16 Period of Availability.

The designation of an area as a zone is effective for 10 years, as provided in the Act.

.17 Qualified Property—Categories.

A. Establishing Categories of Qualified Property.

(1) In consultation with the BRAC Subcabinet, the Department establishes categories of commercial or residential property that enhance the economic development of zones. The categories are deliberately broad and provisional to allow for flexibility and innovation in the planning and development of zones. The Department will update, revise, and amend the categories from time to time to take account of:

(a) Experience and local, regional, and Statewide changes in population distribution;

(b) The availability of regional transit and transportation facilities;

(c) Market demand for various land uses and services; and

(d) Other factors, including those enumerated in Regulation .14A of this chapter.

(2) The Department applies the following principles and criteria to establish the categories of commercial and residential property:

(a) The property and its proposed mode of development should demonstrably enhance the overall economic development of the area, by creating and providing access to jobs, services, and transportation conducive to a thriving community, preferably within walking distance of residences; and

(b) The proposed mode of development should conform to the political subdivision's plan for the area, and most particularly to the density, transit and transportation, and traffic management elements of the plan.

B. Categories of Qualified Property. The Department, in consultation with the BRAC Subcabinet, has determined that the following listed categories of commercial and residential property will enhance the economic development of zones:

- (1) Mid-rise and high-rise multi-family residential buildings, including condominiums, cooperatives, and rental apartments, having separate residential units on at least three floors or levels;
- (2) Two-family and three-family attached houses (duplexes and triplexes) having a density of not less than 3.5 houses per acre;
- (3) Town house type single family attached houses having a density of not less than 3.5 houses per acre;
- (4) Mid-rise and high-rise multi-use buildings with a mix of Class A office, and restaurant, service, or retail spaces and uses;
- (5) Multi-use or flexible use commercial and retail buildings, including research, laboratory, light manufacturing and office uses, and anchor grocery stores, restaurants, retail shops, and service establishments, spaces, and uses;
- (6) In general, but subject to the approval of the Department in consultation with the BRAC Subcabinet, any other category of residential or commercial property that is allowed under the political subdivision's ordinances, regulations, and other provisions governing mixed-use development as provided in its zoning ordinance, comprehensive plan, sector plan, small area plan, revitalization plan, or other economic development plans, or by resolution of the political subdivision's legislative body.

C. Uses Excluded from Categories of Qualified Property. Qualified property does not include the following uses:

- (1) Automobile service or fuel establishments;
- (2) Adult bookstores, adult video shops, or adult entertainment facilities;
- (3) Check cashing facilities;
- (4) Gambling facilities;
- (5) Gun shop or firearms stores;
- (6) Beer, wine, or liquor stores;
- (7) Massage parlors;
- (8) Pawn shops;
- (9) Tanning salons; or
- (10) Tattoo parlors.

D. Determination by Department of Status as Qualified Property. A political subdivision may request the Department to make a determination by September 1 of each year as to whether a property is a qualified property if it does not fit into the categories listed in §§B and C of this regulation. The Department, in consultation with the

BRAC Subcabinet, will make the determination. The determination of the Department as to a specific property is final.

.18 Waiver.

The Secretary may waive or vary particular provisions of this chapter to the extent that the waiver is not inconsistent with the Act.

Administrative History

Effective date: December 29, 2008 (35:26 Md. R. 2250)